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SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1948

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No. 115

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ALDO GUERRINI,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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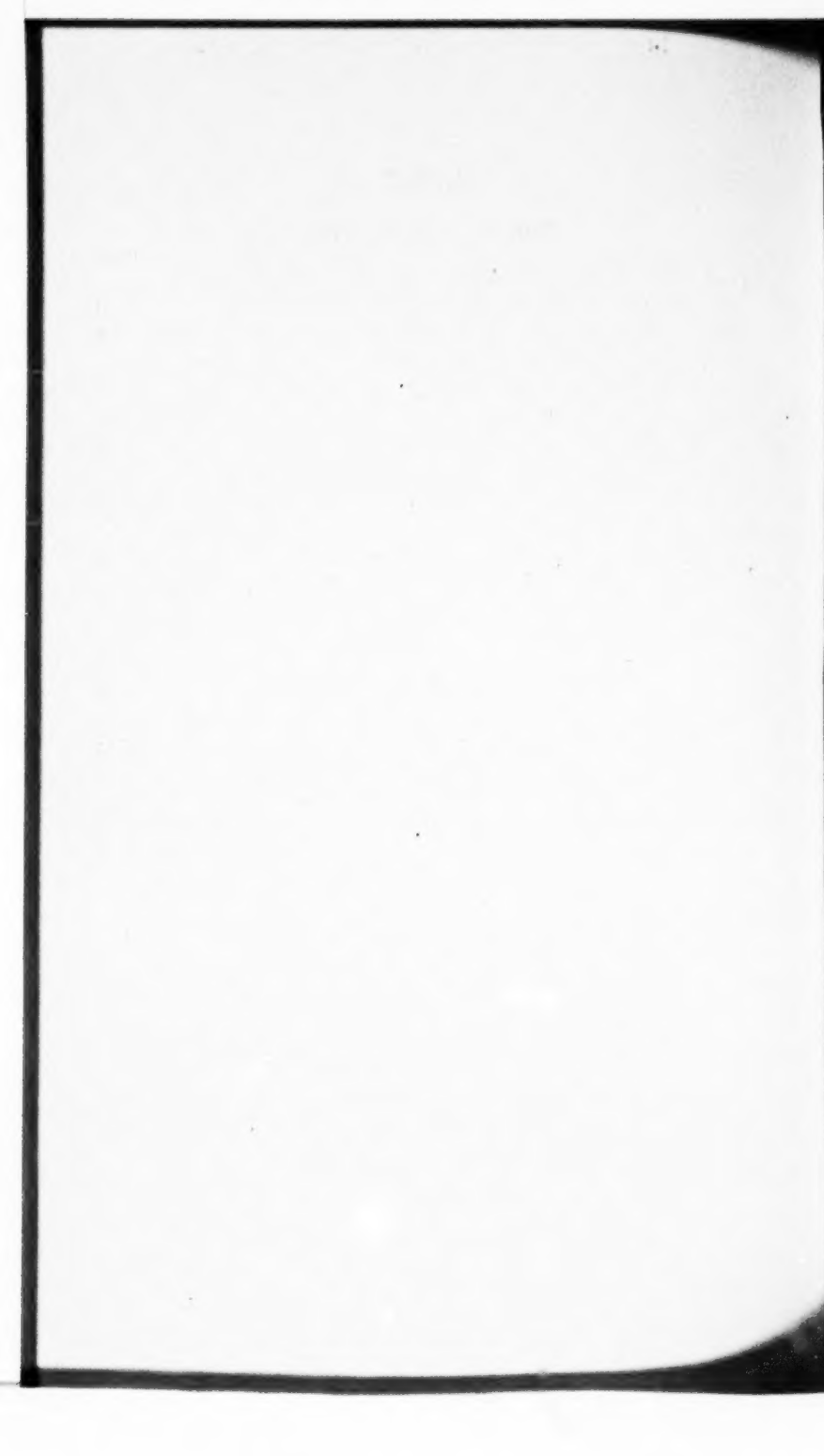
PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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ARTHUR M. BECKER,  
*Counsel for Petitioner.*

DELSON, LEVIN & GORDON,  
ROBERT H. KILROE,  
JOHN W. CRAGUN,  
WILLIAM D. MCGRAW,  
*Of Counsel.*



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1. The first part of the report is a general  
 introduction to the subject of the study.  
 2. The second part is a description of the  
 methods used in the study.  
 3. The third part is a description of the  
 results of the study.  
 4. The fourth part is a discussion of the  
 results of the study.  
 5. The fifth part is a conclusion of the  
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**Argument**

1. The respondent's brief makes no effort to distinguish *Riley v. Agwilines*, 296 N. Y. 402, which conflicts with the decision of the court below. Since this conflict is expressly recognized by both courts, the exercise of this Court's jurisdiction is required.

a. *Seas Shipping Co. v. Sieracki*, 328 U. S. 85, requires that the judgment of the court below be reversed. In both cases the petitioner was the employee of an independent contractor; in both cases he sued the owner of the vessel who "had not surrendered control" (R. 146); in both cases the work performed by the petitioner was found by the court to be "part of the 'ship's service'" (R. 147). Yet in the

*Sieracki* case this Court held that the petitioner was protected by the Admiralty Law and that the shipowner consequently was duty-bound to furnish him with a seaworthy ship. In the present case the court held that the petitioner was not protected by the Admiralty Law and that the respondent was *not* duty-bound to furnish him with a seaworthy ship (R. 147); and, consequently, that the burden was upon the petitioner to prove the respondent negligent under the laws of the State of New York. The work performed by the injured workman in each case was work traditionally performed by the crew. The doctrine of the *Sieracki* case was summed up by the United States Court of Appeals for the Sixth Circuit (*Meyers v. Pittsburgh S. S. Co.*, 165 F. 2d 642, 643):

“The Supreme Court, however, in the *Sieracki* case, supra, developed a broader concept applicable to maritime torts. The obligation which a shipowner owes to its seamen it is not free to nullify by parcelling out the operations to intermediary employers, and that liability attaches even though the owner is without fault. It arises not merely from contract but from the fact of service to the ship with the owner’s consent. \* \* \*

This case accordingly presents no question of extending the doctrine of the *Sieracki* case; the question presented is whether that case shall be followed uniformly throughout the admiralty jurisdiction or whether each Federal court and each State court shall independently determine the law applicable to such maritime causes.

The cases cited by the respondents are not analagous. In *Bruszcwski v. Isthmian S. S. Co.* (C. C. A. 3d, 1947), 163 F. 2d 720, cert. den. 333 U. S. 828, performance of the ship’s service was not involved. The petitioner was employed to repair a broken boom of a vessel, which had thereby become unseaworthy. Obviously no warranty by the respondent could be implied that the boom was not broken. *Puleo v.*

*H. E. Moss, Inc.* (C. C. A. 2d, 1947), 159 F. 2d 842, cert. den. 331 U. S. 847, was one of the cases out of which the conflict between the court below and the New York Court of Appeals arises, as pointed out by that court in *Riley v. Agwilines*, 296 N. Y. 402. In the *Puleo* case, as in the present case, the Second Circuit held that the liability of the respondent must be determined in accordance with state law and that consequently it was the petitioner's obligation to prove the respondent negligent as to a "business guest" (R. 148-9). It was with this conclusion that the New York Court of Appeals disagreed. This Court's denial of certiorari was prior to the time the conflict developed through the decision of the New York Court of Appeals in *Riley v. Agwilines*, *supra*. Further, the question of which law should apply was not involved in the petition for certiorari before this Court. The Second Circuit in the *Puleo* case found the respondent to be negligent. The petition for certiorari sought to obtain a review of that determination. It was utterly immaterial in passing upon that petition to decide whether the respondent would also have been liable because of failure to provide a seaworthy vessel had he not been negligent under the New York law as well. *Armento v. United States* (E. D. N. Y., 1947), 74 F. Supp. 198, is merely an instance of the District Court in New York following, as it was obliged to follow, the earlier ruling of the Second Circuit in the *Puleo* case.

The *Sieracki* case in this Court, *Riley v. Agwilines* in the Court of Appeals in the State of New York, and the present case in the Circuit Court of Appeals for the Second Circuit each involve substantially the same set of facts, and are in irreconcilable conflict.

b. The proposition that petitioner cannot avail himself of the *Sieracki* rule since his libel was not based on unseaworthiness and that it is only here that the *Sieracki* case is

"seized upon" is in complete disregard of the record. The question, under the traditional admiralty test is whether respondent was negligent in failing to provide a seaworthy vessel—a safe place in which to work;<sup>1</sup> and this is the negligence asserted by the libel, ¶ 6, R. 4. Nor is the point first made in this Court. The trial court considered the *Sieracki* case and found it applicable (R. 130). The court of appeals considered the *Sieracki* case at length (R. 146-148). This case is presented to this Court on precisely the rulings of the courts below.

2. The proposition that even if the Federal maritime law applied, the result would not be different, is not well taken. For it was only by finding the Federal maritime law and the *Sieracki* case inapplicable that the court below was able to reverse the judgment of the District Court in favor of petitioner. None of the cases cited by respondent<sup>2</sup> holds or implies that one performing the ship's service in the place of a member of the crew is not entitled to the observance of the standard of care provided by the maritime law for a seaman as this Court held not later than the *Sieracki* case (and see *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52, 61-62). Nor was the point here involved even in-

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<sup>1</sup> This Court has referred to the liability as stemming from "the negligent failure to provide a seaworthy ship and safe appliances." *The Arizona v. Anelich*, 298 U. S. 110, 123.

<sup>2</sup> The cases cited by respondent variously hold that an owner was liable for its negligence—(1) in permitting an accumulation of oil on the deck (though not liable to an injured seaman suing under the Jones Act, where he had assumed the risk), *Holm v. Cities Serv. Tr. Co.* (C.C.A. 2d, 1932), 60 F. 2d 721; (2) in placing explosive oil in a tank the owner knew would be drilled in the presence of fire, *McGill v. Michigan S.S. Co.* (C.C.A. 9th, 1906), 144 Fed. 788; (3) in carelessly stowing cargo, with resulting injury to a stevedore, *La Guerra v. Brasileiro* (C.C.A. 2d, 1942), 124 F. 2d 553, cert. den. 315 U. S. 824; (4) in leaving a hatch improperly secured, with resulting injury to a stevedore, *Consolidation Coatswise Co. v. Conley* (C. C. A. 1st, 1918), 250 Fed. 679; (5) in providing an unsafe ladder for a stevedore to climb, *Grillo v. Royal Norwegian Govt.* (C.C.A. 2d, 1943), 139 F. 2d 237.

directly presented by the cases respondent cites. All of those cases hold the owner liable for its negligence; and if it was liable for direct negligence, there was manifestly no occasion to consider whether it would have been liable for failing to provide a seaworthy vessel and a safe place to work. *Seas Shipping Co. v. Sieracki*, *supra*, 328 U. S. at p. 94. Finally, the cases cited arose prior to the *Sieracki* case, and were not tried on the theory of that case as were *Riley v. Agwilines* and the present case.

The intimation (Brf. Opp. pp. 7-8) that the court below actually did follow the Federal maritime law since it viewed petitioner's alleged contributory negligence not as a bar to recovery but only in reduction of damages, is ill-founded. The forum was an admiralty court, and the rule thus applied was procedural with an admiralty court. The substantive law which the court below applied—wrongfully, we submit—was the State law. The capacity of an admiralty court to hear matters arising entirely under state law is an ancient one, and does not demonstrate that the court here actually applied the Federal maritime law (which it says it did not, R. 147-148), or applied it correctly (which, under the *Sieracki* case, it did not). See *Western Fuel Co. v. Garcia*, 257 U. S. 233, 240.

Respectfully submitted,

ARTHUR M. BECKER,  
Counsel for Petitioner.

DELSON, LEVIN & GORDON,  
ROBERT H. KILROE,  
JOHN W. CRAGUN,  
WILLIAM D. MCGRAW,  
Of Counsel.